Filed 6/21/10 In re Orlando C. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ORLANDO C., a Person Coming Under the Juvenile Court Law.	B216904 (Los Angeles County Super. Ct. No. VJ37043)
THE PEOPLE, Plaintiff and Respondent, v. ORLANDO C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Heidi W. Shirley, Juvenile Court Referee. Affirmed with directions.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Stephanie C. Brenan and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

Orlando C., a minor (minor), appeals from an order declaring him a ward of the juvenile court pursuant to Welfare and Institutions Code section 602[1] by reason of his having willfully disobeyed a court order (Pen. Code, § 166, subd. (a)(4)) by violating a gang injunction. The juvenile court placed him on informal probation for six months, setting a maximum term of confinement of six months. Minor contends that vacation of the judgment and dismissal of the section 602 petition are required because (1) he was not a person subject to the gang injunction, (2) there was no evidence his parent had been served with, or had knowledge of, the gang injunction, and (3) the gang injunction is constitutionally overbroad, violating his constitutional rights to freedom of association and travel or movement. Minor also requests that we correct the minute order of May 12, 2009, to accurately identify the petition that the juvenile court sustained and the petition that it dismissed.

We affirm with directions.

FACTUAL AND PROCEDURAL BACKGROUND

A. The section 602 petitions

On November 7, 2008, the district attorney filed two section 602 petitions against minor, each alleging a misdemeanor violation of Penal Code section 166, subdivision (a)(4), for "[w]illful disobedience of the terms as written of any process or court order . . . lawfully issued by any court . . . ." One of the petitions, denominated "Petition A," alleged that on September 7, 2008, minor violated the civil gang injunction issued by the Los Angeles Superior Court on March 7, 2008, in case No. BC375773 (the gang injunction), against the Varrio Hawaiian Gardens gang (VHG). The other petition, denominated "Petition B," alleged that he violated the gang injunction on September 12, 2008. After the adjudication hearing, the juvenile court sustained Petition A and dismissed Petition B.

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1 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

B. The gang injunction

The gang injunction provided, among other restrictions within the geographical area specified in the injunction (the Safety Zone), a curfew for minors under the age of 18, between 8:00 p.m. one day and 5:00 a.m. the next day, with exceptions only for (1) going to and from classes or bona fide after-school activities, (2) actively engaging in a trade, business or occupation, or (3) a legitimate emergency.[2]

C. The September 7, 2008 curfew violation

1. The prosecution's evidence

a. The injunction violation

On September 7, 2008, near 1:00 a.m., Sheriff Deputies Steve Cox and Freddy Brown were in their patrol car and conducted a traffic stop of a car with two youthful appearing Latino males. The deputies believed they were violating the Los Angeles County 10:00 p.m. and Hawaiian Gardens 8:00 p.m. curfews. The stop occurred within the Safety Zone. Minor, who was 15 years old, was the passenger. The driver

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[2] The pertinent provisions of the gang injunction are as follows: "Defendant Varrio Hawaiian Gardens Gang (a.k.a. 'VHG,' 'VHGR,' 'HXG,' 'HG,' and 'Hate Gang'), its members, and all persons acting under, in concert with, at the direction of, or in association with them or any of them for the benefit of Varrio Hawaiian Gardens, are restrained and enjoined from engaging in or performing, directly or indirectly, any of the following activities in the Safety Zone [an area described in detail in the injunction and outlined on a map attached to the injunction]. [¶] . . . [¶] g. Obey Curfew: [¶] I) If under eighteen (18) years of age, being in or upon public property, or in a public place, between 8:00 p.m. on any day and 5:00 a.m. of the following day, unless (1) going to or from school classes, a legitimate after-school activity (school dance, school athletic competition, or other school-sponsored event), or work, or (2) actively engaged in a legitimate business, trade, profession or occupation, or (3) involved in a legitimate emergency situation that requires immediate attention; [¶] . . . [¶] III) 'Public Place' means the public way and any other location open to the public, whether publicly or privately owned, including but not limited to any street, sidewalk, avenue, highway, road, curb area, alley, bridge, parking lot, automobile, whether moving or not, playground, park or other public ground or public building, any common area of a school, hospital, apartment house, office building, shop, or privately owned place of business, to which the public is invited, including any place of amusement, entertainment, or eating place."

was 20 years old and said he was minor's brother. Both were cooperative and gave their names and birth dates. When asked by Deputy Brown whether or not he had been served with an injunction, minor responded, "Yes, but I'm not a gang member."[3] Minor did not indicate he was involved in an emergency situation. Deputy Cox noted minor's tattoos and verified the young men's identities and ages and learned that minor had been served with the gang injunction on July 9, 2008.

b. The gang evidence

Detective Brandt House, who was in the Sheriff's gang unit and assigned to the VHG gang for three and one-half years, testified as a gang expert. He had numerous contacts with VHG members, was familiar with the gang's history, rivals, signs, and the types of crimes committed and had assisted in obtaining the gang injunction. Detective House was also aware of VHG graffiti, slang and clothing. Detective House testified that VHG engaged in "all manner of crimes," and Chivas and Artesia gangs were its rivals.

Based on his review of information obtained from other deputies and found in arrest reports, field investigation cards, and school discipline records, Detective House opined that minor was a VHG gang member. His opinion was not based on any one factor, but on a combination of factors.

One such factor was minor's tattoos, which included a memorial to a recently murdered VHG member, Arthur Menchaca; a generic gang tattoo "la vida loca," three dots meaning "my crazy life"; and a depiction of a Mexican bandit.

Detective House also considered various field identification cards which pointed to minor's membership in the VHG gang. One such card, related to a July 9, 2008 contact with minor, revealed that minor admitted membership in VHG. In a

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[3] When minor was detained five days later for again violating the curfew provision of the gang injunction (which incident was the subject of the dismissed Petition B), he stated: "Fuck, I'm on the injunction. You might as well take me to jail."

September 12, 2008 contact, minor admitted being an associate of VHG, but denied membership. Detective House explained that if a gang member did not know if a law enforcement officer knew him to be a gang member, he might deny membership, but with a deputy he believed to be aware of his gang membership, he might admit it. Another possible scenario was that minor denied gang membership after being served with the gang injunction. The field identification cards also revealed that contacts with minor occurred in VHG territory.

School discipline records documented several altercations involving minor at school, where comments were made suggesting his gang affiliation, including his calling someone a "rat" and "Arte," references to the rival Artesia gang, and yelling "HG" during a couple of confrontations.

Detective House also considered the presence of "V.H.G." graffiti near minor's house as well as his hair style and gang attire in reaching his conclusion that minor was a member of VHG.

Detective House explained that at the time a person admitted VHG membership to law enforcement, a deputy would serve the person with a copy of the gang injunction. Detective House was aware of only three instances where a person was inappropriately served with the gang injunction. In those cases, Detective House nullified the service. Minor was not one of those whose service was nullified.

2. The defense's evidence

In December 2007, Claudia R, minor's mother, noticed VHG gang graffiti on two palm trees at the curb, in front of her house. She and minor painted over it. There was no other graffiti on her house.

On September 7, 2008, at approximately 11:00 p.m., Claudia R. gave minor permission to go to the store with his young adult cousin, Ernie.

Claudia R. had known Arthur Menchaca since the latter was seven years old. She was aware minor had a tattoo with Menchaca's name, but it had been removed. Claudia R. did not like the tattoo because Menchaca was a gang member, but she had never seen minor and Menchaca together. Her son was not a VHG gang member.

D. The juvenile court's ruling

The juvenile court sustained Petition A relating to the September 7, 2008 curfew violation and dismissed Petition B. The juvenile court noted "that the People have sustained their burden as to [Petition A] only" noting that the violation "is only a technical one. I am not 100 percent convinced that [minor] is, in fact, a gang member."

DISCUSSION

I. Minor was subject to the gang injunction

Minor contends that there was insufficient evidence to support the juvenile court's finding that he was subject to the gang injunction. He argues that the juvenile court "could not decide whether the minor was or was not a VHG gang member. The court did not find the minor to be an active gang member -- one who 'participates in or acts in concert with' [VHG]. . . . Thus, the gang injunction could not apply to the minor as a purported gang member." The juvenile court only found that minor had "some associations with the [VHG] gang." Minor also claims that it would violate the Fifth and Fourteenth Amendment due process clauses for him to be held liable for merely associating with VHG, without proof of guilty knowledge and intent to further the organization's criminal purposes. These contentions are without merit.

For purposes of a gang injunction, an active gang member is one who participates in or acts in concert with the gang so long as the participation or acting in concert are more than nominal, passive, inactive or purely technical. (*People v. Englebrecht* (2001) 88 Cal.App.4th 1236, 1261 (*Englebrecht*).) In determining whether a person has participated in concert with a gang, the court may consider whether the person admits to membership in the gang, whether the person has tattoos only associated with that gang, whether the person has been arrested in association with the gang, and whether a reliable person provides information that the person is an active member of the gang. The court may also consider the clothing, accessories, photographs and close association with known gang members in making that determination, though these latter factors alone are not sufficient to find a person to be

an active member of the gang. (*People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 883.)

Here, minor admitted membership in the VHG gang. Though he later denied membership and only admitted association, there were other indications of gang affiliation in evidence. Minor had verbal confrontations with classmates, who were members of a rival gang, wherein he claimed VHG and made other comments suggesting his membership in that gang. The gang expert explained that to claim membership in a gang without in fact being a member could subject a person to violent repercussions from the gang. Further, minor wore gang attire and had been contacted many times in gang territory by law enforcement, as well as being tattooed in a manner suggesting gang connection. Minor's close relationship with VHG gang members established that he was, at a minimum, an associate of the gang.

Minor contends that his going to the store for food at 1:00 a.m. was not an action in concert or association with VHG, and therefore, he could not have violated the gang injunction. He misinterprets the injunction. Nothing in the gang injunction requires that activity that violates the injunction be gang related. It simply provides that anyone generally acting in concert or association with the VHG gang is enjoined from engaging in specific activities, including violating the curfew. A gang injunction may enjoin activity regardless of whether the specific activity is to further gang purposes. (*People ex rel. Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 44 (*Colonia Chiques*).)

As for minor's claim that his constitutional rights are violated by holding him liable for conduct absent a showing of intent to further the gang's criminal purposes, we note that the same argument was rejected by our Supreme Court in *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090 (*Acuna*). There the defendants complained that they could not be bound by the gang injunction absent proof that each of them possessed "'a specific intent to further an unlawful aim embraced by [the gang].'" (*Id.* at pp. 1122-1123.) The Supreme Court concluded that "in a proper case, an organization and its individual members are enjoinable *without* meeting the 'specific

intent to further unlawful group aims' standard." (*Id*. at p. 1123; see also *Colonia Chiques, supra*, 156 Cal.App.4th at p. 44.)

II. Service of injunction on parent

Minor contends that the judgment must be vacated and petition dismissed because there was no evidence his parent was served with, or had knowledge of, the gang injunction. He argues that disobeying a court order under Penal Code section 166, subdivision (a)(4) is tantamount to a contempt of court and thus the injunction was required to have been properly served on him. Code of Civil Procedure section 1016 provides that the provisions of part 2, title 14, chapter 5, dealing with "Notices, and Filing and Service of Papers" (Code Civ. Proc., § 1010 et. seq.), "do not apply to the service of a summons or other process, or of any paper to bring a party into contempt." (§ 1016.) Citing *In re Morelli* (1970) 11 Cal.App.3d 819 (*Morelli*), minor argues that the reference in Code of Civil Procedure section 1016 to both summons and contempt together "indicates a legislative view that they are analogous," and consequently, service of an initiating contempt paper must be "made in the same manner as for a summons." (*Morelli, supra*, at p. 835.) Code of Civil Procedure section 416.60 provides that a summons must be served on a minor at least 12 years old by serving the minor and the minor's parent, and that did not occur here. This contention is not persuasive.

First, the fact that Code of Civil Procedure section 1016 provides that both summons and contempt papers are not served in the manner specified in the "Notices, and Filing and Service of Papers" chapter, supports only the conclusion that both cannot be served under those sections. It does not specify how they are to be served, and it does not follow that service of both are governed by the service of summons statutes. Minor has suggested no good reason for drawing that conclusion.

Second, even assuming that minor's argument is correct, he ignores that Code of Civil Procedure section 1016 excludes both service of "summons or other process" and "any paper *to bring a party into contempt*" (italics added). An injunction does not

bring a party into contempt. It simply sets forth the court ordered restraints on the party's conduct. There is no contempt unless and until the injunction is violated.

Morelli, relied on by minor, is consistent with this conclusion. That case involved the question of the proper manner of serving an order to show cause re contempt for disobedience of a subpoena. (*Morelli*, *supra*, 11 Cal.App.3d at p. 834.) It was in that context that the Court of Appeal stated that, "The coupling in [Code of Civil Procedure] section 1016 of process to bring a party into contempt with service of summons indicates a legislative view that they are analogous. Thus, the 'paper to *bring* a party into contempt,' is to be considered as paper commanding an initial appearance. . . . (*Morelli*, at p. 835.) An injunction, unlike an order to show cause re contempt, is not a paper which brings a party into a contempt proceeding and commands an initial appearance.

Third, by its own terms, Code of Civil Procedure section 416.60 states only that "[a] *summons* may be served on a minor . . . ." (Italics added.) It does not include any other type of document.

Finally, we have found and been referred to no statute specifying how, or if, an injunction should be served. This may be because it need not be served. "'To render a person amenable to an injunction it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice.'" (*Acuna*, *supra*, 14 Cal.4th at p. 1124; *People v. Saffell* (1946) 74 Cal.App.2d Supp. 967, 979 ["It is also well settled that service of a restraining order or injunction need not be shown to establish a charge of contempt. One who, with knowledge of the order or injunction, does some act forbidden by it, and who comes within one of the classes of persons already mentioned who are subject to the order or injunction, is guilty of contempt"].)

We therefore conclude that there was no requirement that minor's parent be served. Delivery of the injunction to minor, which is undisputed, was adequate in that he had notice and knowledge of the injunction.

III. Constitutionality of gang injunction

Minor contends that the judgment must be vacated and petition dismissed because the gang injunction violates his state and federal constitutional rights to freedom of association and freedom of travel or movement. He argues that the curfew provision prevents a juvenile from socializing with family members outside of the home and limits the juvenile's right to travel, even with a "non-gang adult family member (e.g., parent, spouse, sibling, or cousin) . . . . The juvenile cannot travel with that adult family member -- either by car on the public streets or by foot on the public sidewalks -- in order to go together to a movie, restaurant, or store located either within or outside the safety zone; or in order to visit together with other non-gang family members who are residing, working, or recreating either within or outside the safety zone." He argues that this restraint "drives a wedge into the family unit by keeping family members apart outside the home." This contention is not persuasive.

A. Overbreadth

The record establishes that minor was stopped in the Safety Zone, with a cousin, who, while an adult, was not much older than minor, at 1:00 in the morning. In his argument, minor raises concerns about excessive limitations on family life by the curfew. While such restrictions may affect others, they are not present here.

Constitutional rights are personal and may not generally be asserted vicariously. (*Broadrick v. Oklahoma* (1973) 413 U.S. 601, 610 (*Broadrick*); see also *Colonia Chiques, supra*, 156 Cal.App.4th at p. 42 ["'A party must assert his own legal rights and interests and cannot rest his claim to relief on the rights or interests of third parties'"].) Usually, a person to whom a statute can be constitutionally applied may not challenge the statute "on the ground that it may conceivably be applied unconstitutionally to others, in situations not before the Court." (*Broadrick, supra*, at p. 610.)

A few limited exceptions to this principle have been recognized, but only because of "'the most weighty countervailing policies.'" (*Broadrick, supra*, 413 U.S. at p. 611.) One such exception is the overbreadth doctrine, where litigants are

permitted to challenge a statute impinging upon First Amendment rights, not because their own rights of free expression are violated, but because the statute may cause others not before the court to refrain from constitutionally protected speech or expression. (*Id.* at p. 612; *People v. Borrelli* (2000) 77 Cal.App.4th 703, 718.)

That doctrine is inapplicable here. It is strong medicine employed only sparingly and as a last resort. (*Broadrick, supra*, 413 U.S. at p. 613.) It is a function of substantive First Amendment law (*Sabri v. United States* (2004) 541 U.S. 600, 610) and has been held inapplicable to the "intimate" familial associations, like those minor claims are infringed here. (*Bailey v. City of National City* (1991) 226 Cal.App.3d 1319, 1331-1332, citing *Roberts v. United States Jaycees* (1984) 468 U.S. 609.)

Furthermore, *Broadrick* was concerned with a *statute* that impinged on First Amendment rights and therefore had broad impact in chilling the free speech of people not before the court. This consideration is not present here where we are not concerned with a statute of general applicability but with an injunction applicable to a specific, limited number of gang members. (See *Acuna, supra*, 14 Cal.4th at p. 1114.)

Consequently, we do not evaluate minor's overbreadth contention as to hypothetical facts inapplicable to him, but only consider whether the gang injunction as applied to him violated his constitutional rights to associate and to travel or move.

B. Freedom of Association

The First Amendment protects the freedom of association that involves intimate association in human relationships. (*Roberts v. United States Jaycees, supra*, 468 U.S. at p. 618.) These include those "central to any concept of liberty," such as the right to "attend the creation and sustenance of a family-marriage . . . the raising and education of children [citation]; and cohabitation with one's relatives." (*Id.* at p. 619.) The First Amendment also protects groups whose members join together for the purpose of "'a wide variety of political, social, economic, educational, religious and cultural ends.'" (*Acuna, supra*, 14 Cal. 4th at pp. 1110-1111.)

An injunction may not burden the constitutional right to associate more than is necessary to serve the significant governmental issue at stake. (*Colonia Chiques,*

supra, 156 Cal.App.4th at p. 45; *Englebrecht*, *supra*, 88 Cal.App.4th at p. 1262.) A state has a compelling interest in the public safety and in the safety and well-being of minors. (See *Vo v. City of Garden Grove* (2004) 115 Cal.App.4th 425, 441.) "Preserving the peace is the first duty of government, and it is for the protection of the community from the predations of the idle, the contentious, and the brutal that government was invented." (*Acuna*, *supra*, 14 Cal.4th at p. 1126.)

VHG created a nuisance in the Safety Zone by engaging in criminal conduct, including intimidating citizens, possessing guns and other dangerous weapons, selling, possessing or using drugs and alcohol, vandalizing property, loitering, blocking free passage on streets, and trespassing. In short, VHG made the Safety Zone a place which was unsafe and undesirable for law-abiding citizens to live or frequent. It is reasonably inferred that the criminal conduct in the Safety Zone was more prevalent at night, under the cover of darkness, than during daylight hours. The curfew was an effective way of curbing this conduct during the hours when it was likely to be most prevalent.

Minor argues that the curfew infringed on his right to associate with his family outside of his home. We find the infringement on minor's associational rights to be minimal, when compared to the curfew's salutary purpose. First, the curfew applies only in a clearly delineated and narrow geographical area. Second, it places no restrictions on contact between any individuals outside of the Safety Zone or even within the Safety Zone on nonpublic property. It simply limits the area in which those subject to the injunction can go at specified times. Third, it does not preclude associating with immediate family residing with minor, but only limits the location where that association can occur. Fourth, it only limits minor's access to the Safety Zone between 8:00 p.m. and 5:00 a.m. the following day, most of the times are hours when people customarily sleep rather than associate. Finally, minor was not with a parent or member of his immediate family when he violated the injunction, but was with a cousin who was barely beyond the age of majority. We conclude that "[w]hile the injunction may place some burden on the family contact in the target area, it by no

means has . . . a fundamental impact on general family association [in the facts presented here]. [¶] Any attempt to limit the familial associational impact of the injunction would make it a less effective device for dealing with the collective nature of gang activity." (*Englebrecht, supra*, 88 Cal.App.4th at p. 1263.)

C. Freedom of travel or movement

The federal Constitution embodies a right to move about, which is subsumed in the right to travel. (*Shapiro v. Thompson* (1969) 394 U.S. 618, 629, disapproved on other grounds in *Edelman v. Jordan* (1974) 415 U.S. 651, 671; *Kolender v. Lawson* (1983) 461 U.S. 352, 358; *Aptheker v. Secretary of State* (1964) 378 U.S. 500, 517.) The nature of our federal union and our constitutional concepts of personal liberty combine to require that all citizens are free to travel uninhibited by statutes, rules or regulations which unreasonably burden or restrict this movement. (*Shapiro v. Thompson, supra*, at p. 629.)

We have previously rejected a constitutional challenge to a curfew on the ground that it infringed on the right to travel. (*In re Juan C.* (1994) 28 Cal.App.4th 1093 (*Juan C.*).) In *Juan C.*, a 7:00 p.m. to 6:00 a.m. curfew was instituted by the City of Long Beach as an emergency measure in response to civil disorder. It applied to everyone and to all public places and streets. (*Id.* at p. 1097.) With respect to the defendant's contention that the curfew was overbroad and unreasonably restricted the right to travel, we stated: "Though the right to travel within the United States is constitutionally protected, that right may be legitimately curtailed when a community has been ravaged by flood, fire or disease, and its safety and welfare are threatened. [Citation.] Rioting, looting and burning pose a similar threat to the safety and welfare of a community, and provide a compelling reason to impose a curfew. The right to travel is a hollow promise when members of the community face the possibility of being beaten or shot by an unruly mob if they attempt to exercise this right. Temporary restrictions on the right to travel at night are a reasonable means of reclaiming order from anarchy so that all might exercise their constitutional rights freely and safely." (*Id* at p. 1100.) While the "government must make every effort to

avoid trammeling its citizens' constitutional rights[,] [b]y the same token, those rights are not absolute. '[T]he Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest.'" (*Id.* at p. 1101.)

Conditions created by the VHG gang in the Safety Zone present the very risks to community safety that we found justified the curfew in *Juan C.*; violent crimes, intimidation, use of dangerous weapons, drugs and alcohol, loitering, trespassing, obstructing free passage on public streets and other misconduct. For the reasons discussed in part IIIB, *ante*, we find the infringement on the right to travel to be minimal, particularly when contrasted with the compelling state interests involved.

In some respects, the gang injunction here is even less burdensome on the right to travel than was the curfew approved in *Juan C.* In contrast to that curfew, the gang curfew is in force fewer hours per day and is only applicable to members of VHG, the gang responsible for creating the conditions necessitating the injunction. It did not restrain non-gang affiliated community residents. Furthermore, while the curfew in *Juan C.* was in response to civil unrest resulting from one discreet incident, and was therefore likely to subside in time, the gang injunction was in response to a nagging, ongoing condition that was instigated, not by a single event, but by persistent and longstanding criminal gang activity.

There is an undeniable, substantial and compelling state interest in preventing the destruction of life and property and insuring that lawlessness does not take over our communities and undermine the very foundation of our Constitution. This compelling interest is fostered by a curfew, targeted at those who have been shown to be involved in the gangs which have perpetrated the deleterious conditions. A curfew "protects from injury those who would otherwise enter the area unaware of the danger and disorder; protects those in the area from vigilante action; reduces pedestrian and vehicular traffic which hinders police and fire fighting mobility; prevents or reduces congregations of people which can engender mob psychology and a carnival atmosphere; reduces the number of incidents requiring police action in the curfew

area; and allows the police to administer a rule which is easy to apply." (*Juan C.*, *supra*, 28 Cal.App.4th at p. 1100.)

The gang injunction as applied to minor does not offend constitutional precepts because its restrictions are reasonably related to a compelling government interest. Here, it only enjoined minor from traveling in the Safety Zone during the night time, with a non-parent or guardian, not much older than him.

IV. Correction of adjudication/disposition orders

At the adjudication hearing on May 12, 2009, the juvenile court orally pronounced that Petition A was sustained and Petition B was dismissed. The minute order of that ruling indicated that the petition was sustained, but failed to indicate which petition was sustained and which was dismissed. On May 20, 2009, the juvenile court prepared a nunc pro tunc order adding, "the petition filed 11/7/08 B" was sustained and the "petition filed 11/7/08 A" was dismissed.

Minor requests that the May 12, 2009, adjudication/disposition minute order be corrected to reflect that Petition B was dismissed and Petition A was sustained. Respondent agrees with minor as do we. However, we also conclude that the nunc pro tunc order of May 20, 2009, must be similarly corrected.

Rendition of judgment is an oral pronouncement. (*People v. Mesa* (1975) 14 Cal.3d 466, 471.) Entry of judgment in the minutes is a clerical function. (*Ibid.*; Pen. Code, § 1207.) If a minute order fails to reflect the judgment pronounced by the trial court, the error is clerical and the record can be corrected at any time to make it reflect the true facts. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Mesa*, *supra*, at p. 471; see also *People v. Jack* (1989) 213 Cal.App.3d 913, 915-916.)

Consequently, the minute order of May 12, 2009, and nunc pro tunc minute order of May 20, 2009, must be corrected to reflect that the juvenile court sustained Petition A and dismissed Petition B.

DISPOSITION

The order appealed from is affirmed. On remand, we direct the juvenile court to correct its minute orders of May 12, 2009 and May 20, 2009, to reflect that Petition A was sustained and Petition B was dismissed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P.J.
BOREN

_____, J.
ASHMANN-GERST